IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

WEDNESDAY, THE 13TH JUNE 2007 / 23RD JYAISHTA 1929

WP(C).No. 19585 of 2005(F)

EA.162/1993 of SUB COURT,KOTTARAKKARA.

PETITIONER:

P.VIJAYAMMA,
SALINI BHAVAN, THAZHAMMEL MURI, ANCHAL VILLAGE.

BY ADV. SRI.B.KRISHNA MANI.

RESPONDENTS:

1. **MAHARASHTRA APEX CORPORATION LTD.,**
   MANIPAL, UDUPPI.
2. **E.ABDUL KARIM,**
   NIHAS MANZIL, MUNDAYKALCHERRY,
   VADAKKEVILA VILLAGE, KOLLAM.
3. **D.BALAKRISHNAN,**
   KUZHIVILA VEEDU, ANCHAL MURI, ANCHAL VILLAGE.
4. **V.VASUDEVAN,**
   SALIM BHAVANAM, ANCHAL MURI, ANCHAL VILLAGE.

BY ADV. SRI.S.R.DAYANANDA PRABHU FOR R1,
SRI.V.PREMCHAND FOR R4,
SRI.RAJESH VIJAYAN FOR R3.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 13/06/2007,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C). NO. 19585/2005:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P.1: COPY OF THE APPLICATION DTD. 09/07/2003 IN E.A. NO. 162/93 BEFORE THE SUB COURT, KOTTARAKKARA.

EXT.P.2: COPY OF THE APPLICATION DTD. 04/10/95 IN E.A. 293/95.

EXT.P.3: COPY OF THE APPLICATION DTD. 04/10/95 IN E.A. 292/95.

EXT.P.4: COPY OF THE COMMON ORDER DTD. 18/05/2005 PASSED BY THE SUB COURT, KOTTARAKKARA.

//TRUE COPY//

prv.

PIUS C. KURIAKOSE,J.

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W.P.(C) No. 19585 of 2005

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Dated: 13th June, 2007

JUDGMENT

In a proceeding for execution of a money decree immovable properties were attached and the wife of the judgment-debtor filed a claim petition under Order 21 Rule 58. But that claim petition was dismissed for default. The claimant filed two applications, one for restoration of the claim petition which was dismissed for default and another for condonation of delay which had been caused in the matter of filing the restoration application. By Ext.P4 impugned order the learned Subordinate Judge dismissed the delay petition and consequently dismissed the restoration petition also. Even though evidence was permitted to be adduced by the petitioner and two witnesses including a doctor who had issued Ext.A1 medical certificate to the petitioner were examined, the learned Subordinate Judge found that the application for condonation of delay was not entertainable since Section 5 of the Limitation Act does not apply to applications under Order XXI C.P.C. The above view of the learned Subordinate Judge has the support of the judgment of the Supreme Court in **Damodaran Pillai v. South Indian Bank Ltd.** [2005(4) KLT 192 (SC)]. Mr.Krishna Mani, learned counsel for the petitioner

may be right in his submission that the learned Subordinate Judge's appreciation of the testimony given by P.W.2 doctor was not proper. In my opinion it was absolutely unnecessary for the learned Subordinate Judge to have allowed the petitioner to adduce evidence in the application. The challenge against Ext.P4 fails and the Writ Petition will stand dismissed. No costs.

srd **PIUS C.KURIAKOSE, JUDGE**